IN THE SUPREME COURT OF THE STATE OF NEVADA

		Received Las Vegas Drop Box
VICTORIA GIAMPA,	)	Clerk of Supreme Court
	)	**July 15, 2008**
Petitioner,	)	District Court Case
	)	No: 98-D224029
	)	
vs.	)	Nevada Supreme Court
	)	No. 49500
	)	
CHARLES F. GIAMPA,	)	
	)	
	)	
Respondent.	)	
	)	
	)	

VICTORIA GIAMPA'S PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL

COMES NOW, PETITIONER VICTORIA GIAMPA, In Pro Se, who hereby brings her PETITION TO REPLY TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF

SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL.

DATED this 15th day of JULY, 2008.

By:

_____

Victoria Giampa
1848 Wellington Court
Henderson, Nevada 89014
(702) 434-9027
Petitioner In Pro Se

VICTORIA RESPONDS AND REPLIES TO RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION FOR STAY; RESPONDENT'S COUNTERMOTION FOR THE IMPOSITION OF SANCTIONS AGAINST APPELLANT AND COUNTERMOTION TO DISMISS APPEAL

CHARLES' ALLEGATION NO. 1:

Her request to stay the proceedings, however, was denied by the District Court. Chuck requests that this Court deny Victoria's Motion.

VICTORIA'S RESPONSE NO. 1:

On November 19, 2007, VICTORIA styled her MOTION TO STAY *JUDGMENT* PENDING APPEAL in error; and states that Judge Sandra L. Pomrenze issued its Findings of Facts and Conclusions of Law based on an incorrect styled caption

and summarily denied VICTORIA'S MOTION TO STAY *JUDGMENT* PENDING APPEAL.

On *May 27, 2008*, VICTORIA filed VICTORIA GIAMPA'S CIVIL PROPER PERSON APPEAL STATEMENT and VICTORIA GIAMPA'S MOTION *TO STAY ALL PROCEEDINGS* PENDING APPEAL PURSUANT TO NRCP 8 which states in pertinent part:

> (a) Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Supreme Court. Application for a stay of the Judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the Supreme Court or to a justice thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by the court or a quorum thereof but in

> exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single justice of the court.
>
> (d) Stays in Civil Cases Involving Child Custody. In deciding whether to issue a stay in matters involving child custody, this court will consider the following factors: (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied; (2) whether the nonmoving party will suffer hardship or harm if the stay is granted; (3) whether determination of other existing equitable considerations, if any, is warranted.

VICTORIA contends that this Motion for Reconsideration involves erroneous decisions by Judge Gloria Sanchez and Judge Sandra L. Pomrenze. VICTORIA contends that stays may be issued by the Court in its discretion and on such conditions of security as are proper. See NRCP 62(a). A stay is appropriate to preserve the status quo pending the appeal and to prevent this Court's jurisdiction from being rendered ineffective because no other relief is available. Hough v. Roberts Mining and Milling Co., 58 Nev. 317, 78 P.2d 102 (1938). The jurisdiction of the Court in the instant matter will be made ineffective if it cannot grant relief to VICTORIA and her children from the Order. VICTORIA further contends that because the mooting of her motion prevents her from seeking a determination that the Court's temporary order was incorrect on the merits, it would be inequitable to award fees to PLAINTIFF GIAMPA. State of Oregon, 326 Or. 531, 956 P.2d 177 (1998).

On *January 20, 2005*, ATTORNEY DUCKWORTH files MOTION TO MODIFY CUSTODY AND [MOTION TO] RESOLVE PARENT-CHILD ISSUES. VICTORIA argues that ATTORNEY DUCKWORTH'S unconscionable scheme is in the forefront. He has demonstrated his willingness to play fast and loose with the rules of the Court. He cites rules when they benefit him and conveniently ignores them when they do not. VICTORIA'S fears have turned into reality and ATTORNEY DUCKWORTH'S scheme is now written in stone. VICTORIA argues that ATTORNEY DUCKWORTH'S *MOTION FOR A CHANGE OF CUSTODY* demonstrates his [and CHARLES'] ulterior motive which is highly relevant to Judge Sanchez's determination of both MARCO and Sarah's change of primary custody and any imposition of massive sanctions against VICTORIA. VICTORIA further argues that the similarity of these facts necessary for the determination of first filing for an Emergency *Parent-Child Issue* and a *MOTION FOR A CHANGE OF CUSTODY* reveals that ATTORNEY DUCKWORTH'S and CHARLES' fraud upon the court stem from the same controversy between the parties.

VICTORIA challenges the constitutionality of the Eighth District Court Rules that are silent on the issue of mediation regarding immediate intervention on issues of the children's education, medical, psychological and welfare. VICTORIA argues that Judge Sanchez abuses her discretion when she violates the children's procedural due process rights in not allowing the parties mediation and subsequently allows ATTORNEY DUCKWORTH to exempt the *minor children* from seeking mediation prior to the Court issuing a modification of a change of custody. VICTORIA argues that assessing the children's best interest

surely falls within requesting or seeking mediation to resolve parent/child issues of their education, health and welfare. VICTORIA would further contend that Judge Sanchez is not without control over parental discretion in dealing with the minor children when their need for parental supervision is jeopardized. VICTORIA contends Judge Sanchez' serious misconduct has been clearly established by aiding ATTORNEY DUCKWORTH and his client when they all clearly ignored the troubling issues of the children's lack of parental supervision and lack of parental guidance in their education. The Supreme Court thinks otherwise and has stated that "A state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." Parham v. J.R., 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979). Generally, the Nevada Supreme Court has recognized that a stay should be granted where it is demonstrated that the appellant would suffer irreparable injury during the pendency of an appeal if a stay is not granted. The Court discussed this requirement in Kress v. Corey, 65 Nev. 1, 189 P.2d 352 (1948), "As a rule a supersedeas or stay should be granted...whenever it appears that without it the object of the appeal or writ may be defeated, or that it is reasonably necessary to protect appellant or plaintiff in error from irreparable or serious injury in the case of reversal, and it does not appear that appellee or defendant in error will sustain irreparable or disproportionate injury in case of affirmance..." VICTORIA is frustrated that the parties' children were not required to receive mandated mediation on issues such as their health and education.

VICTORIA contends that generally the Nevada Supreme Court has recognized that a stay should be granted where it is demonstrated that the Appellant would suffer irreparable injury during the pendency of an appeal if a stay is not granted. VICTORIA is especially worried about the harm Marco and Sarah have suffered and who need immediate psychological counseling because they both suffer from depression. Sarah has recently been seen by a doctor who prescribed a mask to aid with her sleep disordered breathing. She has heart palpitations, constantly tires easily and sleeps all day. Unfortunately, CHARLES ignored Sarah's poor eating habits which has now resulted in obesity and sleep apnea. Just recently, Marco was stopped and ticketed by the Henderson Police for a DUI at 2:30 in the morning and is presently awaiting a hearing, drug test, psychological evaluation and a sentence. Both children are not employed nor are they attending college. CHARLES is so saturated by his guilt and shame and his resentment toward VICTORIA that it has blinded him to the fact that these children are growing up without any consequences and growing up without any discipline. CHARLES is essentially bailing them out and these children are suffering the consequences – obesity and acting out. VICTORIA further believes that immediate intervention of a psychiatric evaluation conducted by a court-appointed psychiatrist, counseling, and tutoring, and assistance in designing an intervention program to help the children reduce emotional barriers to their ability to learn is critical to the seriousness of her children's academic and immediate health problems. Equally so, VICTORIA reasons that Dr. Mortillaro who was trained in evaluating mental health could aid the children to establish an intervention program to identify and treat the children's barriers to

learning caused by this Court's failure to protect VICTORIA'S fundamental right in guiding and supervising the children's need for an education. VICTORIA further contends that the children's need for an immediate intervention for an effective education does not moot claims for monetary damages. The Court has ruled in Ceniceros v. Board of Trustees of the San Diego Unified Sch. Dist., 106 F.3d 878, 879 (9th Cir. 1997), that Ceniceros' only claim for monetary damages survives. In O'Neal v. City of Seattle, 66 F.3d 1064, 1066 (9th Cir. 1995), the Court has ruled that "O'Neal's claim for damages saves this case from a complete mootness bar."

VICTORIA further contends that the public interest exception allows appellate review of an issue of considerable public importance if that issue is capable of repetition between either the same parties or other members of the public, but for some reason evades appellate review. VICTORIA contends that the issue is whether the trial court abused its discretion in modifying custody, and challenges the constitutionality of the statutes and further argues that it was not in the children's best interest for this Court to award "joint physical custody" or "joint legal custody" to the parties when they had never previously agreed to such an award. VICTORIA contends that a reasonable person would question how this Court can arbitrarily go about awarding "joint physical" and "joint legal custody" without first defining for itself what the terms mean. VICTORIA argues that a reasonable parent would be surprised to learn that when a party files for a modification of a change of custody, this Court [with deliberate indifference as to whether the parent is "fit"] can make an award of "joint custody" which has a potential to

create a greater risk of harm to the children and a potential for a deprivation of visitation and a loss of custody. Unfortunately this Court's discretional decisions are immune in protecting children from being latchkey, from being left alone without parental supervision, from a lack of parental guidance in their education, and from becoming emancipated too young too soon. Regrettably and unfortunately, such attorney willful misconduct is also immune from the imposition of sanctions.

VICTORIA also contends that another exception to the mootness doctrine is a challenge on the constitutionality of the statute as a whole. VICTORIA argues that the statutory standard of joint custody fails to channel the discretion of the Family Court Judge by specifying the factors on which it should rely in making its prediction because there are no procedural protections and because the ultimate decision is intrinsically arbitrary and uncontrolled. VICTORIA argues that it is quite distressing that this Court has the unbridled discretion to either refuse or agree to conduct an individualized investigation into matters paramount as to whether the minor children <u>were living alone without parental supervision</u> at the Country Club Towers before making a determination that the parties have *joint legal* and/or *joint physical custody* pursuant to NRS 125.490. In addition, the parties stipulated on *April 20, 1998*, that "In the event that controversy arises, this Order of the Court shall remain in full force and effect, and *the parents are encouraged to resolve the controversy themselves or seek mediation prior to further hearings.*" On *April 20, 1999*, when Charles reduced his custody down from 3 weekends a month to 2 weekends a month, CHARLES again stipulated that VICTORIA retain primary custody.

VICTORIA contends that another exception to the mootness doctrine is further fraud upon the Court. VICTORIA argues that the change of custody of Marco is invalid due to myriad substantive and procedural defects. This Court failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combined the contaminated change of custody proceedings of Marco with the change of custody proceedings of Sarah.* VICTORIA contends that in Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." VICTORIA argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA contends that the Courts have recognized that protecting the mental health of children falls well within the state's broad interest in education. Dr. Mortillaro's evaluation and purpose of the Court ordered evaluation is to assess the presence of psychological and social factors that influence future decisions to be made in the best interests of the children. VICTORIA contends that this evaluation and the information obtained will be used for educational purposes and how it will ultimately benefit the children now and in the future. The Courts have reasoned that education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional

training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he or she is denied the opportunity of an education. The Courts further reason that education is not merely about teaching the basics of reading, writing, and arithmetic. Education serves higher civic and social functions, including the rearing of children into healthy, productive, and responsible adults and the cultivation of talented and qualified leaders of diverse backgrounds. Grutter. v. Bollinger, 539 U.S. 306, 123 S.Ct. 2325, 156 L.Ed.2d 304 (2003). On *December 12, 2005*, Dr. Louis Mortillaro, Ph.D. made the following evaluation of the parties which states in pertinent part:

THE PURPOSE OF THE COURT ORDERED EVALUATION IS TO ASSESS THE PRESENCE OF PSYCHOLOGICAL AND SOCIAL FACTORS THAT INFLUENCE FUTURE DECISIONS TO BE MADE IN THE BEST INTERESTS OF THE CHILDREN. EVALUATION RESULTS INCLUDE DISCUSSION ABOUT PARENTING CAPACITY, KNOWLEDGE, SKILLS, ATTRIBUTES AND ABILITIES NECESSARY FOR APPROPRIATE PARENTING BEHAVIOR, PARENTAL PSYCHOLOGICAL FUNCTIONING, THE DEVELOPMENT NEEDS OF THE CHILDREN, ABILITY TO PLAN FOR THE CHILDREN'S FUTURE NEEDS, POTENTIAL FOR INAPPROPRIATE PARENTAL ALIENATION BEHAVIOR THAT MAY NEGATIVELY INFLUENCE THE CHILDREN, HOW PARENTAL WORK SCHEDULES INTERFERE WITH THE TIME SPENT WITH THE CHILD, CAPACITY FOR COPARENTING, THE CHILDREN'S SPECIAL NEEDS AND THE ABILITY OF THE PARENTS TO PROVIDE A STABLE AND

LOVING HOME ENVIRONMENT AND LIVING ARRANGEMENT WITH A MINIMUM OF FAMILY DISRUPTION.

VICTORIA further contends that Dr. Mortillaro's evaluation was to focus on the children's special needs and VICTORIA contends that would include improving the children's ability to learn. Further, Dr. Mortillaro's report was intended to assist in designing an intervention program to help the parents and reduce barriers to the children's ability to learn which was never implemented. Dr. Mortillaro further states:

THE CHILDREN ARE TO BE ENCOURAGED TO FINISH THEIR GIRL SCOUT AND BOY SCOUT ACTIVITIES. MARCO IS TO CONTINUE HIS ACADEMICS IN A TRADITIONAL HIGH SCHOOL UNTIL HE GRADUATES. SARAH SHOULD ALSO GO TO A TRADITIONAL HIGH SCHOOL WHERE SHE CAN COMPLETE HER COURSE WORK UNDER SUPERVISION AND GRADUATE. HOWEVER, A RECENT LETTER FROM HER TREATING PSYCHOLOGIST SUGGESTS SHE REMAIN IN THE INDEPENDENT STUDY SYSTEM AND IS TO COMPLETE HER HIGH SCHOOL GRADUATION REQUIREMENTS BECAUSE A SWITCH BACK TO THE TRADITIONAL HIGH SCHOOL SYSTEM WOULD TAKE HER LONGER TO COMPLETE HER CREDITS AND GRADUATE. APPARENTLY, IF SHE MAINTAINS HER PRESENT PACE, SHE CAN GRADUATE FROM HIGH SCHOOL BY MARCH OR APRIL 2006 AND QUALIFY FOR COLLEGE ENTRANCE.

VICTORIA further contends that Dr. Mortillaro's evaluation was intended to gauge the mental health of the children by identifying internal behaviors such as anxiety and depression and external behaviors such as aggression and acting out. Dr. Mortillaro further states:

BOTH CHILDREN HAVE PSYCHOLOGICAL PROBLEMS THAT ARE BEING CURRENTLY TREATED. BOTH HAVE DEFICITS IN SELF ESTEEM, AND SARAH APPEARS TO BE MORE DEPRESSED THAN MARCO. THE CHILDREN NEED TO CONTINUE WITH PSYCHOLOGICAL COUNSELLING, THE DURATION AND FREQUENCY OF WHICH SHALL BE DETERMINED BY THEIR TREATING THERAPIST.

PLAINTIFF'S ALLEGATION NO. 2:

Thus, Chuck further requests this Court to impose sanctions against Victoria in the form of an award of attorney's fees to reimburse Chuck for the fees and costs incurred in responding to her frivolous Motion.

VICTORIA'S RESPONSE NO. 2:

ATTORNEY DUCKWORTH deliberately misapplies NRAP 38 when he requests this Court to impose sanctions against VICTORIA. VICTORIA further argues that ATTORNEY DUCKWORTH'S request is a willful abuse of process solely meant to delay this case. VICTORIA argues that CHARLES' motion for an imposition of sanctions against VICTORIA is not only legally insufficient to sustain a viable objection but also manifestly absurd, ludicrous, and scandalous. There is absolutely no basis in fact or law that

this Court could find to determine to punish VICTORIA in any further proceedings in trying to protect her two minor children. VICTORIA contends that generally the attorney's neglect is imputed to his client, and that ATTORNEY DUCKWORTH'S client is held responsible for it and his recourse is an action for malpractice. Valeme v. First Western Savings & Loan, 90 Nev. 377, 528 P.2d 699 (1974).

PLAINTIFF'S ALLEGATION NO. 3:
This Court similarly should find Victoria to be a vexatious litigant in light of her multiple frivolous appeals, and the absurd and frivolous nature of her current Motion before this Honorable Court.

VICTORIA'S RESPONSE NO. 3:

VICTORIA argues that ATTORNEY DUCKWORTH disregards Judge Hardcastle's Order when she declares that VICTORIA is not a vexatious litigant and proceeds to file his motion requesting a different judge to declare VICTORIA a vexatious litigant under legal theories he thought would ultimately prevail. ATTORNEY DUCKWORTH'S attempt to avoid the consequences of its wrongful vexatious motion should fall victim to the principle of res judicata. VICTORIA argues that the doctrine of res judicata would preclude Judge Pomrenze from issuing an Order declaring VICTORIA a vexatious litigant.

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VICTORIA argues that Judge Pomrenze abuses her discretion in entering a pre-filing order against her and declaring her a vexatious litigant because her Order 1.) did not contain a list of the filings and rulings that led the court to impose its broad filing restriction; 2.) makes no

substantive findings as to the harassing nature of VICTORIA'S actions; 3.) and fails to set any standard against which a future court-access determination should be made. In addition, Judge Pomrenze makes the following erroneous statements..."*given the number of motions filed over the years and the number which have been found to be non-meritorious....*" VICTORIA argues that this Court improperly relies upon the filings before another judge which do not interfere with VICTORIA'S motions still pending before this Court.

VICTORIA further argues that Nevada does not have a court rule or statute authorizing Judge Pomrenze to declare VICTORIA a vexatious litigant and limit her access to the courts as a defendant defending an action for a custody matter for which she did not file. VICTORIA would concede that given the long history of this case, she has filed numerous motions, but not numerous complaints for divorce. That her past filings were not vexatious because they were not filed in bad faith in attempting to protect her children. That the number of motions filed by VICTORIA did not contain false or exaggerated allegations. That she brought forth substantial evidence substantiating her claims for CHARLES' contempt and for alleging his and ATTORNEY DUCKWORTH'S willful misconduct, gross negligence, abuse of process, fraud upon the court, and excessive delays resulting in prejudice. VICTORIA also contends that Judge Pomrenze has not ruled on VICTORIA'S pending motions seeking redress but instead - with complete indifference - interferes with her attempts to file legal documents which results in constitutional procedural and substantive violations and prejudices her right to future filings. VICTORIA contends that the

Court's have expressed their views that "An injunction...restricting an individual's access to the court system...is an extraordinary remedy that should be narrowly tailored and rarely used." De Long v. Hennessey, 9132 F.2d 114 (9th Cir. 1990).

On *February 11, 2004,* Judge Sanchez, made the following inopposite statements about VICTORIA'S ability to file motions which proves Judge Pomrenze of bias and prejudice when she deems VICTORIA a vexatious litigant as follows:

> *JUDGE SANCHEZ: ...and defendant may be very well meaning, and she certainly is a brilliant litigant from -- in comparison to the normal litigants who don't have counsel because she – she cites the case law. She's -- she's you know, she's someone you'd want to hire if you had that kind of case where there were so many complex issues to litigate because she's extremely thorough.*
>
> *JUDGE SANCHEZ: There's numerous citations to transcripts, a lot of research. I mean, I can't conceive -- it must take months to research that kind of a brief, to file a ninety-nine page brief with twenty-two issues for relief. And she cites transcripts and case law and -- I mean, it's beyond the pale. We don't even have lawyers who've been practicing for thirty years filing those kinds of pleadings. So it's -- The benefit is that we know we have an informed litigant here who is not the normal uninformed pro per litigant who is at a loss as to what the law provides and what's required in terms of burden of proof.*

On *July 20, 2007*, Chief District Court Judge Kathy A. Hardcastle issues the unappealed and unchallenged Court Order and inopposite finding of Judge Pomrenze:

> JUDGE HARDCASTLE: Plaintiff's Countermotion for Finding Defendant to be a Vexatious Litigant shall be denied without prejudice.
>
> JUDGE HARDCASTLE: Plaintiff's Countermotion for the Imposition of Sanctions and For Reimbursement of Attorney's Fees shall also be denied.

PLAINTIFF'S ALLEGATION NO. 4:

These post-divorce proceedings were initiated with Chuck's filing of his Motion to Modify Custody and Resolve Parent-Child issues, on *January 20, 2005*. At the time Chuck filed his motion, the parties' son, Mark, was 15 1/2 years old (born August 15, 1989).

VICTORIA'S RESPONSE NO. 4:

VICTORIA contends that ATTONEY DUCKWORTH abuses the legal process and uses Judge Sanchez's authority, help and power to shorten time in order to hear a holiday visitation matter on an emergency nature and challenges the use of a procedure normally reserved for cases of an emergency nature. VICTORIA argues that no real emergency existed other than to abuse the legal process and churn litigation as a catalyst by the simple filing of an action to gain a sham de facto custody and eventually gain primary physical custody. VICTORIA argues that it is the district court's jurisdiction to make short-term temporary

adjustments to the parties' custody arrangement on an emergency basis to protect and safeguard a child's welfare and security and not to allow ATTORNEY DUCKWORTH to file an emergency motion for the children to travel to Chicago at the 12th hour of the Christmas season solely to churn litigation. Koffley v. Koffley, 1260 Md.App. 633, 866 A.2d 161, 166-67 (Ct.Spec.App.2005).

VICTORIA argues ATTORNEY DUCKWORTH purposefully and deliberately violates the Eighth District Court Rule 5.12(a) when he obtains evaluations of (2) psychiatrists without a Court Order in anticipation of filing a Motion For a Change of Custody of Marco. VICTORIA'S loss of parenting both her children was directly caused by such fraudulent act. EDCR 5.12(a) provides:

> That a party may not have a "therapist, counselor, psychologist or similar professional" examine a child for the purpose of obtaining an expert opinion for trial or hearing except upon court order."

ATTORNEY DUCKWORTH blatantly again violates EDCR 12(a) when he cites and quotes and uses as authority without the Court's permission Dr. McCosh's evaluation report whose report was never previously Ordered by this Court:

> *Dr. McCosh noted the following in his evaluation of Mark:*
> *Mark presents as a 15-year old, Caucasian male, who is initially accompanied by his father for the interview...*

ATTORNEY DUCKWORTH commits gross negligence and abuse of process when he further violates EDCR 5.12(a) and cites and quotes and uses as authority Dr. McCosh's evaluation and states:

> *"A copy of the evaluation of J. Alexander McCosh, Ph.D., is attached hereto as Exhibit 1. Similarly a summary of Mark's counseling with Bradley W. Gruner, Psy.D., of the Human Behavior Institute, is attached hereto as Exhibit 2. Dr. McCosh noted the following in his evaluation of Mark:*
>
> *CLINICAL INTERVIEW AND BEHAVIORAL OBSERVATIONS: Mark presents as a 15-year old Caucasian male, who is initially accompanied by his father for the interview. Mark speaks in a very rapid, pressured manner, although he does appear to be comfortable and relaxed in the presence of his father. Mark describes a long-standing history of inattentive, fidgety, and restless behavior. He denies any suicidal or homicidal ideation, and there is no apparent evidence of a thought disorder. Mark is candid in his description of his chronic conflicts with his mother in her home.*
> * * *
> *It should be noted that Mark's mother was contacted in order for her to provide behavioral data describing Mark's functioning in her home. At the time of this dictation, she has not provided such data.*
>
> *Similarly, Dr. Gruner found and concluded as follows:*

"Our work began on 8/12/04 when we conducted an Intake Evaluation. At this time, Mark presented with frustration, anger, depression (supported by the Reynolds Adolescent Depression Scale) low self-esteem, difficulty concentrating, resentment towards his mother, and complaints of unfair disciplinary practices in his mother's home.

Our work included: addressing communication problems proactively (v. reactively); coping with reported "mixed messages" from mom; attempts to "partner" with mom and collaborate about reasonable and doable expectations for conduct and subsequent rewards for successes; developing strategies for de-escalating conflicts with mom; and most recently, addressing Mark's apathy, his resignation to the belief that nothing will change and the learned helplessness that he attributes to his problematic interactions with his mother...
During the court of Mark's therapy thus far, his mother Victoria Lugo, has been invited by the undersigned to attend Mark's sessions of 3 occasions. Though she accepted my invitations verbally, she did not attend any of our sessions.

ATTORNEY DUCKWORTH with malice, fraudulently misled the Court into believing and relying upon the Behavioral Healthcare Options Evaluation and Dr. McCosh's evaluation and Dr. Gruner's evaluation in strict violation of EDCR 5.12(a). VICTORIA further contends that ATTORNEY DUCKWORTH begins to cite and directly quote and use as authority Dr. McCosh's report as *grounds for <u>termination</u>* of custodial rights against VICTORIA as a

"boiler plate." VICTORIA contends that a reasonable person would conclude that ATTORNEY DUCKWORTH'S references to VICTORIA were made with malice when he cites and quotes and uses as authority Dr. McCosh's report and attempts to show that VICTORIA has failed to support her child and that, therefore, her parental relationship should be severed. Again, ATTORNEY DUCKWORTH'S use of misconduct to trick and dupe this Court by deliberately violating EDCR 5.12(a) was willful and intentional and done in reckless disregard of its possible consequences of his desire to illegally snatch Marco[and later Sarah] away from VICTORIA. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 503 P.2d 9 (1972).

VICTORIA contends that district courts have the inherent power to set aside judgments procured by extrinsic fraud. Extrinsic fraud has been held to exist when the unsuccessful party is kept away from the court by a false promise of compromise, or such conduct as prevents a real trial upon the issues involved, or any their act or omission which procures the absence of the unsuccessful party at the trial. Further, it consists of fraud by the other party to the suit which prevents the losing party either from knowing about his rights or defenses, or from having a fair opportunity of presenting them upon the trial. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA further argues that the change of custody of Marco is invalid due to myriad substantive and procedural defects. This Court failed to evaluate Marco's change of child custody proceedings on its own unique facts and on a *case by case basis and unlawfully combined the contaminated change of custody proceedings of Marco with*

the change of custody proceedings of Sarah. VICTORIA contends that in Christy v. Carlisle, 94 Nev. 651, 654, 584 P.2d 687, 689 (1978), this court stated: "It is our underlying policy to have each case decided upon its merits." VICTORIA argues that the district courts have the inherent power to set aside judgments procured by extrinsic fraud. Lauer v. District Court, 62 Nev. 78, 140 P.2d 953.

VICTORIA challenges the Eighth District Court Rules that are silent on the issue of mediation regarding immediate intervention on issues of the children's education, medical, psychological and welfare. VICTORIA argues that Judge Sanchez abuses her discretion when she violates the children's procedural due process rights in not allowing the parties mediation and subsequently allows ATTORNEY DUCKWORTH to *exempt the minor child Marco* from seeking mediation prior to the Court issuing a modification of a change of custody. VICTORIA argues that assessing the children's best interest surely falls within requesting or seeking mediation to resolve parent/child issues on issues of the children's education and welfare.

VICTORIA would further contend that Judge Sanchez is not without control over parental discretion in dealing with the minor child Marco [and Sarah] when their need for parental supervision is jeopardized. VICTORIA contends Judge Sanchez' serious misconduct has been clearly established by aiding ATTORNEY DUCKWORTH and his client when they all clearly ignored the troubling issues of the children's lack of parental supervision and lack of parental guidance in their education. The Supreme Court thinks otherwise and has stated that "A state is not without constitutional control over parental discretion in dealing with children when their

physical or mental health is jeopardized." Parham v. J.R., 442 U.S. 584, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979).

CHARLES' ALLEGATION NO. 5:

On July 19, 2005, Chuck filed a similar motion seeking to modify custody pertaining to the parties' daughter, Sarah Elizabeth Giampa, born December 11, 1987.

VICTORIA'S RESPONSE NO. 5:

VICTORIA argues that ATTORNEY DUCKWORTH realizes he made a critical mistake and commits fraud upon the court when he violates EDCR 5.12(a). He bemoans the fact that VICTORIA objects to the change of custody of the minor child Marco, yet at the 12th hour of Sarah reaching the age of majority, since this Court had in the past allowed ATTORNEY DUCKWORTH to violate the Nevada Rules of Civil Procedure, it aids and abets him again and turns a blind's eye to violate Rule 5.81 again without first filing for mediation before filing for a change of primary custody of Sarah. ATTORNEY DUCKWORTH deliberately and maliciously cites and quotes directly from (2) different psychologists' evaluations who had not yet been Ordered by this Court to evaluate Marco and now ATTORNEY DUCKWORTH carries over those (2) contaminated psychological evaluations into the change of custody proceedings of Sarah. ATTORNEY DUCKWORTH'S abuse of process gains a procedural and tactical advantage as a result of not filing for mediation prior to a change of custody of Sarah. VICTORIA would contend that ATTORNEY DUCKWORTH intentionally and repeatedly violates the Rules of Civil Procedure and the Rules of Professional

Conduct in engaging in deceit and fraud upon the court in the malicious preparation of papers for a change of custody. VICTORIA further argues that extrinsic fraud has been held to exist when the unsuccessful party is kept away from the court by a false promise of compromise, or such conduct as prevents a real trial upon the issues involved, or any other act or omission which procures the absence of the unsuccessful party at the trial. VICTORIA contends that it consists of fraud by ATTORNEY DUCKWORTH and CHARLES which prevents the losing party either from knowing about her rights or defenses, or from having a fair opportunity of presenting them upon the trial. Landon v. Landon, 74 Cal.App.2d 954, 169 P.2d 980.

VICTORIA argues that because ATTORNEY DUCKWORTH deliberately and purposefully violates Rule 5.81 in the first proceedings of a change of custody of Marco, he deliberately carried over papers contaminated by fraud and makes the 2nd change of custody of Sarah fraud and all judgments flowing from such judgments as void.

CHARLES' ALLEGATION NO. 6:

Since that time Chuck filed his original motion seeking a change of custody, Victoria has filed more than 40 motions with the District Court. On numerous occasions, she was sanctioned by the District Court for the frivolous nature of these filings.

VICTORIA'S RESPONSE NO. 6:

VICTORIA argues that she was denied a fair trial due to Judge Sanchez's bias. Judge Sanchez purposely favored

CHARLES and gave him an opportunity to purge his contumacious behavior; allowed Marco, Sarah, and Chuck time to further conspire and not call each other on the cell phone after hours; and allowed for a cover-up of the children living alone and without parental supervision. Here Judge Sanchez modified the dates for production of the cell phone records and gave CHARLES another opportunity to purge his contumacious behavior when she made the following ruling:

> *Statements regarding the school MARCO would attend. Court Advised, there is no pending motion regarding the school issue. In April 2005, the parties agreed that MARCO would be enrolled in a Christian School, therefore, that is the Order.*

VICTORIA argues that as soon as she would challenge ATTORNEY DUCKWORTH and CHARLES' violations, this Court would absolve them of such contumacious behavior and allow them to defeat the true spirit and intent of the best interest of the children standard. At this time, the Court issues the following Orders regarding Dr. Mortillaro:

> *The parties SHOULD ask Dr. Mortillaro to expedite the school issues to help the parties resolve this issue amicably. Dr. Mortillaro may speak to and receive reports from any counselors he wishes.*

VICTORIA argues that Judge Sanchez has undertaken to severely sanction VICTORIA on numerous occasions causing an unjust and suspect result because the award of such huge financial sanctions have impaired her financial ability to be in compliance with the prior arrangement to

pay Court ordered attorney *sanctions for fees* to counsel of record for CHARLES. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights). The joint adverse impact of not receiving the regular monthly spousal support combined with the imposition of excessive sanctions for fees have resulted and created a financial hardship for VICTORIA. VICTORIA compares the massive sanctions imposed upon her to criminal contempt and argues that it is a result of desperately trying to protect her children from ATTORNEY DUCKWORTH'S abusive tactics. VICTORIA contends that the amount of excessive sanctions Judge Sanchez imposed transformed it into a criminal fine. The Supreme Court has states that "these practices tend to impose unjustified burdens on other parties, frustrate those who seek to vindicate their rights in the courts, obstruct the judicial process, and bring the civil justice system into disrepute. Schwarzer, Sanctions Under the New Federal Rule 11-A A Closer Look, 104 F.R.D. 181, 182 (1985).

VICTORIA further contends that a reasonable person would conclude that this Court was incorrect in its findings about the reasonableness of the amounts and further conclude that the mere size of the sanctions transformed it into criminal fines. Miranda v. Southern Pacific Transportation Co., 710 F.2d 516, 521 (9th Cir. 1983). VICTORIA further challenges this allegation because she recalls when she had been severely sanctioned having been deemed to have filed frivolous and otherwise legally insufficient papers before the Court. CHARLES, and his counsel of record, then sought and obtained such hefty and massive sanctions against her.

VICTORIA sets forth a review of a history of massive sanctions imposed against her by this Court that she defends as unconscionable and outrageous as follows:

> *2/11/04 GLORIA S. SANCHEZ:*
> *Plaintiff's request for attorney's fees is GRANTED as he is the prevailing party and Plaintiff's request for sanctions under EDCR 7.60 and NRCP 11 is GRANTED. Defendant has filed suits in every forum conceivable after the settlement was reached and Plaintiff has to respond and incur fees and costs to defend himself. The Court must find that when there is no relief awarded in all of the different rulings and different forums, this is just a form of harassment and frivolous. COURT ORDERED, $6,000 in ATTORNEY'S FEES awarded to Plaintiff and SANCTIONS in the amount of $1,500 awarded for a total of $7,500.00 and that amount is REDUCED TO JUDGMENT. The $7,500.00 is to be paid by an offset of $500 per month from the property equalization payment until the $7,500.00 is paid in full. FURTHER, if similar pleadings are filed in the future that are non-meritorious, the fees and sanctions will be higher. [DICKERSON, DICKERSON, CONSUL & POCKER]*
>
> *4/26/05 GLORIA S. SANCHEZ: With respect to fees as to the custody issues, COURT ORDERED, FEES and/or SANCTIONS are DEFERRED until the evidentiary hearing.*
>
> *Regarding fees for Defendant's countermotion to increase support, that request was denied, however,*

Defendant had to respond to Plaintiff's motion for change of custody and file a countermotion, therefore, the Court will award a partial amount of fees with respect to the countermotion to increase and ORDERED, $850.00 in ATTORNEY'S FEES awarded.

Regarding Defendant's countermotion to clarify and reconsider filed on February 14, 2005, the Court has not found any viable issues for relief that have been raised, therefore, COURT ORDERED, $1,500 in ATTORNEY FEES awarded for that motion.

Regarding Defendant's motion to clarify filed on March 15, 2005 asking Family Mediation Center to conduct an investigation, the Court has denied that motion and a modest amount of FEES in the amount of $750.00 awarded.

Regarding Defendant's motion to re-issue subpoenas filed on February 28, 2005, that request has been denied, therefore, FEES in the amount of $1,500 awarded for that motion.

Regarding the motions to continue and require the parties to go to mediation, the Court will not award any fees on those motions because they did not generate a response and the Court does not believe the parties have the ability to communicate and/or negotiate.

COURT ORDERED, a modest SANCTION of $750.00 awarded against Defendant for raising issues that

have been previously ruled on and are specifically on appeal. The sanctions and attorney's fees are REDUCED TO JUDGMENT and are payable to Mr. Duckworth.

Beginning on May 15, 2005 and on the 15th of each month, Defendant is to pay Mr. Duckworth $500.00 until the total amount is paid in full. If Defendant falls 30 days behind on the payments in any month, Plaintiff will deduct the $500.00 from the debt equalization payment and he will send it to Mr. Duckworth.[SMITH LARSEN & WIXOM]

2/27/06 MINUTE ORDER:
Statement regarding the sanctions previously awarded against Defendant. COURT FINDS, the fees that were awarded to Mr. Duckworth were $5,350. Parties agree that Defendant paid three payments of $500.00 for a total of $1,500, leaving $3,850 due. Subtracting the $800.00 in sanctions awarded against Plaintiff last date, leaves $3,005 due. Plaintiff offset $2,500.00 from the equalization payments, leaving $550.00 due.

3/3/06 DISCOVERY COMMISSIONER MORRISA SCHECHTMAN, COMMISSIONER RECOMMENDED AS FOLLOWS:
Plaintiff is AWARDED $1,500.00 in ATTORNEY FEES and is REDUCED TO JUDGMENT against Defendant.

ATTORNEY FEES of $15000.00 awarded retroactively to the 3-31-06 hearing and $1500 for today's hearing.

12/27/07 JUDGE POMRENZE issues the following Orders:

Argument regarding countermotion for attorney's fees, attorney Duckworth's contention that Defendant continues to raise custodial issues, Defendant's request for sanctions alleging that Plaintiff's Countermotion did not contain Points and Authorities and was therefore improper.

12/28/07 HEARING is taken off calendar as the issues are on appeal;

Defendant's Motion for Stay is Denied;
Court finds Defendant is a Vexatious Litigator, given the number of motions filed over the years and the number which have been found to be non-meritorious, therefore, Defendant must get the permission of the Court to file any future motions; Plaintiff is awarded Attorney's Fees in the amount of $1,500.00;
Defendant's request for sanctions against Plaintiff is denied as being non-meritorious.
Plaintiff was not barred from filing a Countermotion and the Countermotion was meritorious in part.

VICTORIA contends Judge Sanchez abuses her discretion when she fails to impose sanctions on ATTORNEY DUCKWORTH and CHARLES for contempt and they should have been precluded from receiving sanctions.

Ingham v. United States, 167 F.3d 1240, 1246 (9th Cir.1999).

VICTORIA further argues that the discovery of new evidence that ATTORNEY DUCKWORTH'S willful deceit and fraud upon the court further violates EDCR 16.1(2) Disclosure of Expert Testimony when he fails to provide VICTORIA with written reports of the (3) witnesses named in his disclosure. EDCR 16.1(2) states in pertinent part:

> (B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The Court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

VICTORIA contends that that pursuant to 16.1(f) Sanctions, that this Court has the power to sanction ATTORNEY DUCKWORTH and CHARLES for their willful deceit and fraud upon the court when they violate Mandatory Trial Pretrial Discovery Requirements which state in pertinent part:

> In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

ATTORNEY DUCKWORTH's pattern and practice of willful abuse of process is to deviously style numerous captions Points & Authorities; however, the motion and/or countermotions are devoid of statutes, rules, and citations to authority. VICTORIA argues that Judge Sanchez and Judge Pomrenze commits misconduct when they deliberately ignore ATTORNEY DUCKWORTH repeatedly filing responsive papers before this Court that lack a memorandum of Points and Authorities and an affidavit as required by E.D.C.R. 2.20 which states in pertinent part:

> (b) Within 10 days after the service of the motion, the opposing party must serve and file written opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file written

opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.

(e) A memorandum of points and authorities which consists of bare citations to statutes, rules, or case authority does not comply with this rule and the court may decline to consider it. Supplemental briefs will only be permitted if filed within the original time limitations of paragraphs (a), (b), or (d), or by order of the court.

VICTORIA further contends that ATTORNEY DUCKWORTH'S affidavit is silent on the basis of how his client, CHARLES, has been harmed or prejudiced. ATTORNEY DUCKWORTH should have put these claims in his affidavit or instructed his client to draft and sign an affidavit himself. In addition, ATTORNEY DUCKWORTH purposely omits filing and attaching affidavits proscribed by EDCR 2.21, Affidavits on Motion which provides in pertinent part:

(c) Affidavits must contain only factual, evidentiary matter, conform with the requirements of N.R.C.P. 56(e), and avoid mere general conclusions or argument.
Affidavits substantially defective in these respects may be stricken, wholly or in part.

On *October 2, 2007*, CHARLES attempts to evade VICTORIA'S motions and settlement offer by filing in bad faith [one month prior to rejecting VICTORIA'S genuine offer of settlement] Ex-Parte Motion For Order to Show

Cause Why Defendant Should Not Be Held In Contempt of Court; Plaintiff's Motion For Contempt and For The Imposition of Sanctions Against Defendant And For an Award of Attorney Fees. VICTORIA contends that CHARLES rejecting VICTORIA'S genuine offer and filing a Contempt Motion was solely to unreasonably delay litigation, harass and increase litigation by proceeding to trial which was grossly unreasonable and made in bad faith with no hope for VICTORIA to recover. In improperly filing an ex-parte motion, CHARLES violated the true spirit of obtaining a proposed genuine settlement between the parties and should be severely sanctioned.

CHARLES' ALLEGATION NO. 7:

Victoria fails to cite appropriate legal authority justifying her request for a stay.

VICTORIA'S RESPONSE NO. 7:

VICTORIA challenges ATTORNEY DUCKWORTH'S statement as that VICTORIA fails to cite authority because she has been diligent in filing papers and motions and has never shirked her duty to cite statutes and case law as authority before this Court and any other Court since the inception of this case. In addition, the Supreme Court of Nevada, Civil Appeals Pilot Program outlined the instructions in How To Fill Out the Form for a Motion For Stay (Child Custody) For Parties Without Attorneys and stated in pertinent part:

> INSTRUCTIONS: The Nevada Supreme Court prefers short and direct statements. Citation to legal

authority or the district court record is not required but would be helpful to the Court.

CHARLES' ALLEGATION NO. 8:

Pursuant to NRS 129.010 and NRS 125A.035, the District Court no longer has jurisdiction over Sarah and Mark in light of their emancipation. In light of the children's emancipation, her arguments are absurd and frivolous. The District Court no longer has the jurisdiction to order the children to visit with Victoria, "to have them live with her," or to "participate in any of their important life decisions."

VICTORIA'S RESPONSE NO. 8:

VICTORIA challenges the constitutionality of the statutes and argues that Judge Pomrenze's [and Judge Sanchez's] courtroom demeanor and conduct toward VICTORIA implied a hostile feeling and spirit of ill will and resulted in prejudice to VICTORIA and her children. The record in this case is replete with the Court's implicit disapproval of VICTORIA attempts to protect these children as an impossibility because in the Court's minds these minor children [15 year old 'new age 18'] were emancipated in this Court's mind. VICTORIA argues that Judge Sanchez and Judge Pomrenze both subjectively characterized VICTORIA'S deep concerns about her children as futile. VICTORIA argues that Judge Sanchez and Judge Pomrenze made age-based distinctions of the minor children that violates the Equal Protection Clause.

VICTORIA further argues that the statutes at issue are facially neutral. It creates no classifications and sets forth

that child custody determinations should be based solely on "the best interest of the child." This Court applied an evenhanded application to the statutes and deliberately violated NRS 125.480 by rushing the minor children into early emancipation without procedural due process notice and an opportunity to be heard; thus, denying the minor children a relationship with VICTORIA and deprived her of her rights and responsibilities of child rearing. VICTORIA contends that any parent of ordinary intelligence would not give up hope to try to convince the Court to protect these children. The brief portion of the record shows Judge Pomrenze denying VICTORIA'S seemingly reasonable requests to issue an order to protect her children and demonstrates a fixed judgment that requires her to recuse herself and restore the absolute confidence of the parties in the fairness of these proceedings. VICTORIA argues that Nevada's public policy in determining custody of a *minor child*, the sole consideration of the court, is the best interest of the child," and not treating minors arbitrarily by denying them a right based solely on a few months' difference in age.

VICTORIA argues that Judge Pomrenze's legal error, motivated by bad faith, ignores the children's troubling issues under the best interests of the children standard and focuses instead on matters that are wholly irrelevant, such as the fact that ATTORNEY DUCKWORTH abuses the process and requests a needless continuance on the eve of a hearing. Attorney Duckworth represents to the Court and states in his motion that he is from the law firm Smith, Larsen & Wixom, but he does not inform the Court the reason that another attorney from this same firm could not make an appearance. After all, the hearing scheduled for *July 24, 2007*, is simply on the Court's Motion calendar and

certainly is not a trial or an evidentiary hearing arguably justifying Attorney Duckworth's specific attendance. His request for a continuance is yet another dilatory tactic and bad-faith interference with the administration of justice. In addition, Judge Pomrenze did not evaluate the timeliness of ATTORNEY DUCKWORTH'S motion and failed to balance VICTORIA'S constitutional right to a hearing against the inconvenience and delay that would result from the continuance.

VICTORIA contends that the language used by Judge Pomrenze in the *July 19, 2007*, Court Minute Order is facially and literally ambiguous and unreasonably subject to interpretation requiring immediate court intervention for correction and/or clarification in order to ensure compliance. VICTORIA contends that generally the Nevada Rules of Appellate Procedure deem a Minute Order a nonappealable Order. Judge Pomrenze's Minute Orders on July 19, 2007 as follows:

> Court noted ongoing issues regarding the children, however, both children will have emancipated within a month, therefore, those issues will not be addressed. Court noted issues of arrearages and attorney's fees. Argument regarding request to continuance due to conflicting schedule of attorney Duckworth. Defendant recited her statement on the record....
>
> All pending Motions will be addressed at the next hearing date; 7/24/07. Motions CONTINUED to 8/28/07.

> No Order is required from today, the Minutes will stand as the Order.

VICTORIA challenges for a second time this Court's premature mandate that these *minor children will soon emancipate without first issuing orders regarding* the minor children's best interest and the need for intervention into issues of their education and psychological and medical needs pursuant to NRS 125.140(2). These children still have no capacity to contract for a rental agreement at the Country Club Towers, and they are still subject to legal control by their father. This Court has never conducted an independent hearing nor issued Orders declaring the minor children legally emancipated pursuant to NRS 129.080: Judicial Emancipation of Minors and NRS 129.120 Hearing; Duties and powers of court; considerations in grant or denial of petition which states in pertinent part:

> 4. The grant or denial of the petition is a matter within the discretion of the court. In making its determination, the court shall consider:
> a.) whether the parents or guardian of the minor have consented to emancipation;
> b.) whether the minor is substantially able to support himself without financial assistance;
> c.) whether the minor is sufficiently mature and knowledgeable to manage his affairs without the guidance of his parents or guardian; and
> d.) whether the emancipation is in the best interest of the minor.

VICTORIA challenges the constitutionality of the best interest of the children statute and argues that reasonable

parents would have a difficult time understanding that a culture of indifference permeates Family Court against children age 15 and older and that this indifference permeates this Court. That this Court could cut off parents' rights as joint custodians and their rights could cease at any time before a child age 15 reaches the 'new age 18' even though the legislature failed to give a well-defined definition for the term "joint custody."

CHARLES' ALLEGATION NO. 9:

Victoria further argues that the "children's need for counseling and/or vocational rehabilitation training to complete their education is still a vital claim for their prospective relief and is an exception to the mootness doctrine." Again, the District Court has no jurisdiction to entertain any such request for relief.

VICTORIA'S RESPONSE NO. 9:

In denying mediation, this Court failed to protect the procedural rights of the children and parents which resulted in the children's loss of educational opportunities and seriously infringed upon VICTORIA'S opportunity to participate in these same opportunities.

VICTORIA contends that this Court failure to Order mediation to determine Marco's and Sarah's immediate need for counseling, tutoring and guidance in their education, prevented her full and effective parental participation and guidance and violated constitutional procedural requirements. Town of Burlington v. Dept. of Educ., 736 F.2d 773, 783 (1st Cir. 1984). VICTORIA again

argues that this Court's denial of arbitration at this juncture was critically important because it pit the children against VICTORIA in an adversarial position and now made this child custody case fault-based. VICTORIA further contends that the children's need for an immediate intervention for an effective education does not moot claims for monetary damages. The Court has ruled in Ceniceros v. Board of Trustees of the San Diego Unified Sch. Dist., 106 F.3d 878, 879 (9th Cir. 1997), that Ceniceros' only claim for monetary damages survives. In O'Neal v. City of Seattle, 66 F.3d 1064, 1066 (9th Cir. 1995), the Court has ruled that "O'Neal's claim for damages saves this case from a complete mootness bar."

CHARLES' ALLEGATION NO. 10:

Accordingly, there is absolutely no chance that the "movant is likely to prevail on the merits in the appeal" with respect to orders pertaining to the parties' adult children.

VICTORIA'S RESPONSE NO. 10:

VICTORIA argues that the Courts have ruled that fraud upon the court harms the integrity of the judicial process and resulted in a miscarriage of justice. That fraud upon the court "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision." Pumphrey v. K.W. Thompson Tool Co., 62 F.3d 1128, 1131 (9th Cir.1995) VICTORIA contends that because Judge Sanchez failed to make independent Findings of Fact and Conclusions of Law on the merits in the 1st change of custody proceedings of Marco, that ATTORNEY DUCKWORTH'S second Motion to Modify

Custody filed on *July 19, 2005* must fail and is void. Here, the Court did not provide VICTORIA with the opportunity to be heard independently after ATTORNEY DUCKWORTH filed Findings of Fact and Conclusions of Law on the 1st change of custody proceedings of Marco. VICTORIA contends that this is particularly troubling given that this Court made *combined* Findings of Fact and Conclusions of Law based on *contaminated change of custody proceedings of Marco*, that VICTORIA reasons that she would *prevail* on a both change of custody proceedings solely on Dr. Mortillaro's written evaluation of the parties. Moreover, this Court prejudiced and deprived VICTORIA the opportunity to challenge CHARLES' statements that he was living with the children at the Country Club Towers and denied her bringing forth evidence of the only psychiatrist who was Court Ordered to evaluate the parties before the evidentiary hearing. Instead, ATTORNEY DUCKWORTH'S gross negligence, bad faith, and willful misconduct in contacting, citing as authority from (2) psychiatrists not previously ordered by this Court went totally against Dr. Mortillaro's evaluation that these children were not to live alone without supervision. VICTORIA further argues that ATTORNEY DUCKWORTH'S misconduct to use (2) psychiatrists' evaluations not previously ordered by this Court combined with his failure to present Dr. Mortillaro as a trial witness does not excuse ATTORNEY DUCKWORTH'S gross negligence since his client has the burden to show a change in substantial circumstances. VICTORIA contends that this alone constitutes error and misconduct on Judge Sanchez' part.

CHARLES' ALLEGATION NO. 11:
First, Victoria continues to maintain that she has substantial evidence (in the form of "cell phone records, police reports, affidavits from friends") that would have resulted in the Court denying Chuck's motion to modify custody of their children.

VICTORIA'S RESPONSE NO. 11:

ATTORNEY DUCKWORTH'S silence is deafening on this particular troubling issue. On 3/23/05, unbeknownst to VICTORIA, she discovers new evidence of fraud upon the Court that CHARLES had signed a lease and rented an apartment in the amount of $1,500.00 at the Country Club Towers. VICTORIA attached as an exhibit the lease CHARLES entered into at the Country Club Towers. CHARLES had enticed the parties' children with the prospect of living alone and unsupervised in their own apartment. VICTORIA argues that a reasonable person would assume that CHARLES could not assume the role of a de facto parent on a day-to-day basis fulfilling both the children's physical and psychological needs, the children's care and affection for a substantial period when he had not yet filed a complaint for divorce nor filed for a legal separation from his wife. Now CHARLES' devious motivation and ATTORNEY DUCKWORTH'S fraud upon the court in filing for a change of physical custody had already gained momentum. Marco was deliberately provoking arguments with his mother, acting out and breaking house rules. Marco [and Sarah] is now in a loyalty conflict between VICTORIA and CHARLES who is waving the proverbial carrot [car/money/cell phones/renting an apartment] in front of their noses and *coaching the*

children to fabricate any conflict the children and their mom are having in direct violation of Judge Thompson's Order. Charles renting an apartment for the children was a disruption and created more instability at times of visitation. Because of his busy work schedule, clearly CHARLES' habit and pattern is leaving the minor children alone and without parental supervision. The parties' irresponsible children in essence have been rewarded by the court in their efforts at bad behavior evidenced by Marco's Individual Discipline Report from Bishop Gorman High School dated 3/14/05:

ALL INCIDENTS WITHOUT DETAILS:

3-3-05	Disruptive behavior
3-1-05	In possession of pager, phone, lazer, et.
2-22-05	Insubordination of staff, etc.
2-16-05	Disruptive behavior
1-11-05	CONTRACT STATUS
1-10-05	Inappropriate behavior in class
12-9-04	In possession of paper, phone, lazer, etc.
12-7-04	DISCIPLINARY PROBATION STATUS
12-3-04	Inappropriate behavior in class
12-2-04	Failure to comply with misc. instruction
11-5-04	Inappropriate behavior in class
2-22-04	Inappropriate behavior in class
9-10-04	Inappropriate behavior in class
2-8-05	BISHOP GORMAN HIGH SCHOOL PROGRESS REPORT
Health – F	Religion - F

CHARLES' ALLEGATION NO. 12:

Victoria later argues that the undersigned "deliberately carried forward to moot this case solely to vindicate Charles' interest in maintaining primary custody, recovering attorney fees, and at the same time inducing this Court to threaten and punish Victoria with more severe sanctions for fees."

VICTORIA'S RESPONSE NO. 12:

VICTORIA argues that Judge Sanchez has undertaken to severely sanction VICTORIA on numerous occasions causing an unjust and suspect result because the award of such huge financial sanctions have impaired her financial ability to be in compliance with the prior arrangement to pay Court ordered attorney *sanctions for fees* to counsel of record for CHARLES. Stedtheld v. State, 114 Idaho 273, 755 P.2d 1311, 1314 (1988) (to show a violation of due process, the petitioner must demonstrate the judge's vindictiveness or intent to punish him for exercising his rights). The joint adverse impact of not receiving the regular monthly spousal support combined with the imposition of excessive sanctions for fees have resulted and created a financial hardship for VICTORIA. VICTORIA compares the massive sanctions imposed upon her to criminal contempt and argues that it is a result of desperately trying to protect her children from ATTORNEY DUCKWORTH'S abusive tactics. VICTORIA contends that the amount of excessive sanctions Judge Sanchez imposed transformed it into a criminal fine. The Supreme Court has states that "these practices tend to impose unjustified burdens on other parties, frustrate those who

seek to vindicate their rights in the courts, obstruct the judicial process, and bring the civil justice system into disrepute. Schwarzer, Sanctions Under the New Federal Rule 11-A A Closer Look, 104 F.R.D. 181, 182 (1985).

VICTORIA further contends that a reasonable person would conclude that this Court was incorrect in its findings about the reasonableness of the amounts and further conclude that the mere size of the sanctions transformed it into criminal fines. VICTORIA contends that while Judge Sanchez warned of the potential of more sanctions, the Court never considered imposing less drastic sanctions as an alternative. Although Rule 11 is mandatory in its terms, nonetheless pro se litigant should not be judged by standards identical to those applicable to lawyers. Hughes v. Rowe, 449 U.S. 5, 15 (1980). "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claim."

CHARLES' ALLEGATION NO. 13:

Victoria's suggestion is that the District Court denied her the opportunity to present her evidence in opposition to Chuck's requested relief, and that the undersigned delayed these proceedings. This argument presented to the Court by way of her Motion is false and absurd. Victoria conveniently omits from her discussion the fact that she had the opportunity to present her evidence regarding the care of the parties' children at the evidentiary hearing scheduled for August 30, 2006. Chuck was prepared to proceed with the evidentiary hearing on August 30, 2006. Victoria, however, curiously asked the Court for a continuance of the hearing that she now complains that she never received.

The District Court warned Victoria that a continuance of the evidentiary hearing would result in a newly scheduled hearing date that would be set only months prior to Mark's emancipation. The District Court even recommended to Victoria that she proceed with the evidentiary hearing given the long delay until the next scheduled evidentiary hearing date. Victoria balked, and pressed forward with her request for a continuance. For Victoria now to complain that she somehow lost the opportunity to present evidence and protect her "due process" and 'constitutional" rights is patently absurd. Victoria – not Chuck or the undersigned – delayed these proceedings to the point that the children both had emancipated by the time an evidentiary hearing could be conducted.

VICTORIA'S RESPONSE NO. 13:

VICTORIA contends that Judge Sanchez's repeated failure to order a visiting judge and her overall neglect of this matter leaves VICTORIA with no other choice but to conclude that this Court is clearly biased and prejudiced and commits an abuse of discretion in deliberately moving this matter forward in an efficient and proper manner. Judge Sanchez made the following determination as to discovery:

> *VICTORIA: One other issue I wanted to address for today, your Honor. I was not able to obtain discovery. I had noticed Charles Giampa. I had attempted to take his deposition, and he failed to show. I sent a letter to counsel and counsel -- what I'm arguing is that these issues were split, because some issues did not require the production of documents, so therefore,*

in the spirit of cooperation, Plaintiff Giampa should have made himself available for the portions of the deposition that could have gone forward that day. Of course we could have continued the deposition until a later date, giving the Plaintiff an opportunity to respond to the production of documents. But again, I feel that I would be at a disadvantage to try to cross-examine Plaintiff Giampa on issues of his lack of supervision, the interrogatories, and his affidavit which I have not had an opportunity to ask him about.

JUDGE SANCHEZ: Well, you have the chance to ask him under sworn oath, and that's all a deposition would be, would be him sworn and testifying under oath. So you have the same opportunity in these next 8 hours if the concern is custody related. The main goal, the main purpose, for setting the evidentiary was to determine custody, time share, those kinds of issues. A deposition is sworn testimony under oath just as him being on the witness stand with you having a chance to examine him; that's the same thing. It's better, because I'm here to rule on objections instead of preserving them for the record, so -- you already have the same chance you would at a deposition, so I don't see that there's a disadvantage in terms of custody and you withdrew your appeal so we could go forward on custody.

VICTORIA: And your Honor, we discussed this, that the reason I withdrew my appeal is so the issue of discovery could go forward, and right now you're

denying me that due process right to take his deposition.

JUDGE SANCHEZ: Are you asking me now to continue the custody hearing?

VICTORIA: Yes, I would like that so I could take his deposition, your Honor.
VHS 14:18:19

...

VICTORIA: But the -- as far as the issue of the appeal, you had made the decision, because the issues were up on appeal, that I could not proceed with discovery, so I withdrew the appeal, leaving the issue of discovery open, and now I feel that I'm being held at a disadvantage without --

THE COURT: No. What I said was when you have appealed a discovery order that pertains to the child and we have and evidentiary hearing that pertains to custody issues, I don't have jurisdiction to hear it unless you withdraw your appeal, so it was up to you if you wanted the Supreme Court to rule, but that would mean we'd have to delay the hearing today, or if you wanted to withdraw your appeal, so we could go forward. Withdraw it, but you have to timely file any discovery requests. (VHS 14:09:32)

VICTORIA: Your Honor, do you have the power to make that decision on my discovery requests?

THE COURT: Sure.

VICTORIA: Since he has a history of not --

THE COURT: The Discovery Commissioner hears it initially and makes a recommendation and then you have a right to do an objection.

VICTORIA: You, your Honor, do you have that power?

THE COURT: All district court judges have that power, but they normally start with the discovery commissioner who makes that recommendation, and then we hear it on objection. (VHS 14:37:55)

VICTORIA contends that after *she withdrew her appeal on July 30, 2006* to seek discovery, Commissioner Schectman also prevented VICTORIA from seeking discovery. The effect of the delay denied PLAINTIFF the opportunity to confirm by sworn testimony that CHARLES' commits fraud upon the court in leaving the children alone and unsupervised without parental supervision and receipt of an unlawful reduction in his monthly spousal support income by unsubstantiated and false claims of loss of gross annual income.

VICTORIA argues that the Court has taken an inconsistent position regarding its jurisdiction when she states to VICTORIA that it did have 'the power to make a decision on VICTORIA'S discovery requests.' The Court deliberately caused the excessive delay as the case was inappropriately transferred to Discovery Commissioner Schechtman and then back to Judge Sanchez, and then back to Discovery Commissioner Schechtman and then back to Judge Sanchez.

The excessive delay prevented VICTORIA from her constitutional right to parent her children and it denied the children being protected by VICTORIA. In addition, the effect of the excessive delay prejudiced her and denied VICTORIA a separate evidentiary hearing to object to the change of primary custody of Marco based on the substantial evidence that CHARLES left the children alone without parental supervision. VICTORIA further argues that Judge Sanchez, ATTORNEY DUCKWORTH, Discovery Commissioner Schechtman, and CHARLES caused the excessive delay thereby affecting an unconstitutional taking of VICTORIA'S children. ATTORNEY DUCKWORTH filed a Motion for a Change of Custody in *January of 2005*, but VICTORIA was prevented from seeking reasonable discovery, and that absent the delays, a change of custody likely would have been awarded in VICTORIA'S favor based on the substantial evidence she brought forth that CHARLES had shunned the parties' children and rented an apartment for them at the Country Club Towers leaving them alone without parental supervision. VICTORIA further contends that Courts have expressed their view that "The period of time in constituting unreasonable delay need not be extensive if 'the future holds only the prospect of continued improprieties." Harrison v. Health Net Health Plan of Oregon, No. CV 02-1320 HA, 2005 WL 465132, at *2 (D.Ore., February 28, 2005).

CHARLES' ALLEGATION NO. 14:
Second, Victoria suggests that the undersigned "obtained an expert opinion not once but twice in anticipation of filing a motion for a change of custody prior to Judge Sanchez ordering a psychiatric evaluation of the parties." Victoria's suggestion is that the undersigned sought and obtained

expert opinion on his own with respect to the issues of custody. There is no such evidence in the record. In reality, the parties' son had been engaged in counseling for several months. His counselors did not perform a custody evaluation. Rather, they simply reported their observations to Chuck. These observations included mark's unwaivering [sic.] and fervent desire to live with his father.

VICTORIA'S RESPONSE NO. 14:

[See VICTORIA'S RESPONSE NO. 11 re Marco and Sarah]

VICTORIA argues that ATTORNEY DUCKWORTH obtains Dr. McCosh's and Dr. Gruner's psychological evaluations of Marco prior to Judge Sanchez ever issuing an Order and cites and quotes and uses it as authority in strict violation of EDCR 5.12(a). VICTORIA argues that ATTORNEY DUCKWORTH'S preparation of and participation in the concealment of the (2) psychological evaluations violates the Rules of Professional Conduct. "Because the courts of this state must rely upon the assistance of attorneys to ascertain the truth of matters before them, attorneys must be fair and forthright with the courts." Matter of Discipline of Mines, 523 N.W.2d 424, 426 (S.D. 1994). The Courts have further ruled that "it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Mines, 523 N.W.2d at 426. ATTORNEY DUCKWORTH acts with malice when he fraudulently misled the Court into believing and relying upon the Behavioral Healthcare Options Evaluation and Dr. McCosh's evaluation and Dr. Gruner's evaluation in strict violation of EDCR 5.12(a).

VICTORIA further contends that ATTORNEY DUCKWORTH begins to cite and directly quote from Dr. McCosh's report as *grounds for termination* of custodial rights against VICTORIA as a "boiler plate." VICTORIA contends that a reasonable person would conclude that ATTORNEY DUCKWORTH'S references to VICTORIA were made with malice when he cites and quotes from Dr. McCosh's report and attempts to show that VICTORIA has failed to support her child and that, therefore, her parental relationship should be severed. Again, ATTORNEY DUCKWORTH'S use of misconduct to trick and dupe this Court by deliberately violating EDCR 5.12(a) was willful and intentional and done in reckless disregard of its possible consequences of his desire to illegally snatch Marco [and later Sarah] away from VICTORIA. Nevada Credit Rating Bur. v. Williams, 88 Nev. 601, 503 P.2d 9 (1972).

VICTORIA contends that at this time ATTORNEY DUCKWORTH requests a psychiatric evaluation of the parties. VICTORIA would point out that CHARLES had previously requested her to attend an evaluation session with Dr. McCosh six (6) months prior to the Court Ordering a psychiatric evaluation in clear violation of EDCR 5.12(a). Clearly, CHARLES tries to entrap VICTORIA to get pre-evaluated prior to Judge Sanchez issuing any Court Order for a psychiatric evaluation of the parties. Once bitten, twice shy, [CHARLES' forging her name to documents, allowing the car to be repossessed, failing to pay support obligations] VICTORIA was suspicious that his invitation was an attempt to entrap her and was part of his elaborate scheme to gain primary custody of the children in the near future.

On *July 24, 2006*, ATTORNEY DUCKWORTH seals his pattern and practice of willful deceit and fraud upon the court in stone when he writes a letter to VICTORIA disclosing a list of experts who had never been approved nor ordered by this Court to conduct an evaluation in strict violation of EDCR 5.12(a):

> *Pursuant to the Court's Order, the following is the schedule of witnesses we intend to call at the evidentiary hearing:*
>
> *Charles Giampa;*
> *LaDeana Gamble;*
> *Victoria Giampa;*
> *Mark Chambers, Ph.D.;*
> *Jay Alexander McCosh, Ph.D.;*
> *Bradley W. Gruner, Psy.D.*
>
> *Please be advised that, at this time, we do not intend to call Dr. Louis Mortillaro as a witness at the evidentiary proceedings.*
>
> *Bryce C. Duckworth.*

VICTORIA further argues that this discovery of new evidence is where ATTORNEY DUCKWORTH'S willful deceit, gross negligence, abuse of process and fraud upon the court further violates EDCR 16.1(2) Disclosure of Expert Testimony when he fails to provide VICTORIA with *written reports* of (3) witnesses named in his disclosure. EDCR 16.1(2) states in pertinent part:

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The Court, upon good cause shown or by stipulation of the parties, may relieve a party of the duty to prepare a written report in an appropriate case. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

VICTORIA contends that that pursuant to 16.1(f) Sanctions, that this Court has the power to sanction ATTORNEY DUCKWORTH and CHARLES for their willful deceit and fraud upon the court when they violate Mandatory Trial Pretrial Discovery Requirements which state in pertinent part:

In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable

expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

CHARLES' ALLEGATION NO. 15:

Third, Victoria alleges that "Judge Sanchez failed to follow its own procedural rules and ignored and allowed Attorney Duckworth to surreptitiously combine the change of custody of Sarah with the change of custody of Marco." The record below reflects that the District Court refused to enter any orders regarding Sarah until such time as Chuck had filed an appropriate motion regarding Sarah's custody, and noticed Victoria with such a motion. Chuck filed his Motion to Modify Custody and Resolve Parent-Child Issues; Motion for Order to Show Cause and Related Relief on July 19, 2005. Thus, for Victoria to attempt to smear the reputation of the undersigned as acting in some underhanded manner is false.

VICTORIA'S RESPONSE NO. 15:

VICTORIA argues that the newly discovered evidence is that Judge Sanchez willfully commits willful misconduct and abuses its discretion when it allows ATTORNEY DUCKWORTH to proceed to file and proceed with the contaminated proceedings of a change of custody of Marco by initially violating EDCR 5.12(a) and thereafter fraudulently combine the 1st change of custody proceedings of Marco with the 2nd custody proceedings of Sarah. VICTORIA further argues that Judge Sanchez commits

willful misconduct when she first fails to resolve the 1st custody proceedings of Marco on its *own unique merits.*

VICTORIA further argues that this Court abuses its discretion since the Nevada District Court has previously recognized that the basic underlying policy is to have each case decided on its merits and as such, its determinations must be set aside. Tahoe Village Realty v. DeSmet, 95 Nev. 131, 134, 590 P.2d 1158, 1161 (1979). VICTORIA further contends that Nevada judicial policy favors a decision on the merits and heightens in domestic relations matters. Dagher v. Dagher, 103 Nev. 26, 28, 731 P.21 1329, 1330 (1987).

DATED this 15th day of JULY 2008.

By: _____
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